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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/971,797	10/05/2001	Michael Kauschke	34303/49	3584

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EXAMINER

YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	Application No. 09/971,797	Applicant(s) KAUSCHKE ET AL.	
	Examiner Sam Chuan C. Yao	Art Unit 1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12 and 14-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 14-22 and 24-35 is/are rejected.
- 7) ☐ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Objections*

1. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-10, 12, 14-20, 24-30, and 32-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

It is acknowledge at the outset that, the original disclosure teaches using one particular species namely: polypropylene. Amending the independent claims to now generically use a "*poly(monoolefin)*" raises an issue of new matter being introduced into an original disclosure. This limitation far encompasses what would have been reasonably conveyed to one in the art reading the original disclosure as whole. In fact, with Counsel's own admission on 02-26-04, the term "*poly(monoolefin)*" embraces copolymers of olefin components.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. See Paper No. 5 numbered paragraph 6.

A dependent claim must further limit the recited limitations to which it is dependent to. Otherwise, the recited dependent would not only be redundant, but also confusing. In present situation, claim 10 would appear to an alternative characterization of basically the same limitation. If it is Applicant's contention that, this claim further limit claim 1, it is suggested for Counsel to provide an actual example where the limitation in claim 1 step (B) would not necessarily have the recited characteristic in claim 10.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-3, 10, 12, 14-16, 19-21, and 24-32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Lunn et al (US 4,999,235). See the attached magnified

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print out of figure 2 and column 3 lines 22-32. Note this figure is an actual "optical micrograph" of a non-woven fabric.

$D_y$  (edge to edge) is 13 mm;  $D_x$  (edge to edge) 17 mm

$D_y$  (center to center) is 24 mm;  $D_x$  (center to center) 30 mm

$D_y$  (center to edge) is 20 mm;  $D_x$  (center to edge) 31 mm

(Vertical to Vertical) $_y$  (edge to edge) is 28 mm;

(Horizontal to Horizontal) $_y$  (edge to edge) is 42 mm or

(Horizontal to Horizontal) $_x$  (edge to edge) is 35 mm.

8. Claims 1-3, 10, 12, 14-16, 19-21, and 24-32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Marmon et al (US 6,465,073) as evidence from the teachings of Abuto et al (US 6,096,668). See the whole disclosure.

It is taken that, the term "*poly(monoolefin)*" reads on an elastomeric/elastic metallocene-catalyzed polyolefins disclosed by Morman et al as evidence from the teachings Abuto et al (col. 6 lines 36-65). Abuto et al teaches polyethylene elastomer, polypropylene elastomer, etc. as examples of elastic/elastomer polyolefins.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-7, 10, 12, 15-22, and 24-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over France 2,411,260.

With respect to claims 1, 3, 10, 15 and 26-32, France '260 teaches, in one embodiment illustrated in example 1, forming a filamentary non-woven fabric, the filament being continuously and randomly deposited onto a conveyor belt (page 5 full paragraph 2, see US Patent 3,542,615 for details); passing the web to a pair of embossing rolls having a raised bonding configuration, wherein, each the projecting parts of the raised bonding configuration comprises a major axis and a minor axis, and having a relative distance ratio between horizontal distance (d) and vertical distance (d') of around 1.3:1 (page 4; page 6 full paragraph 2-3; figures 2-5); and, bonding the web such that the *"major axis of the projection parts parallel to the machine direction"* of the non-woven fabric, thereby forming a bonded web having properties that are *"very anisotropic"* (page 9; example 1). Although not explicitly disclosed, the *"very anisotropic"* non-woven fabric in this example must NOT have equal tensile strength and equal percent elongation in a cross-machine direction as compared to a machine direction of the web, because the bonding areas between the two directions are not equal. Note the ratio (d/d') is around 1.3. Moreover, as clearly illustrated in figures 2-5, the bonding pattern density in the horizontal and vertical directions is substantially uniform.

With respect to claim 2, since the ratio of the vertical distance (d') and horizontal distance (d) or vice versa of the projection parts ranges from about 1:1.3 to about 1:5 (page 8 lines 1-5), the relative total bonding area between horizontal and

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vertical directions must inherently either fall within or overlap the recited range in claim 1.

Note: Where ... the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. **Whether the rejection is based on "inherency" under 35 USC § 102, on prima facie obviousness" under 35 USC § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products or to obtain and compare prior art products."** In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-4 (CCPA 1977).

France teaches using rayon-type materials in making a non-woven web, but does not appear teach using a poly(monoolefin) material for making the non-woven web. However, it would have been obvious in the art to use a poly(monoolefin) material for making a non-woven web in a process taught by France '260, because it is a notoriously common practice in the art to interchangeably use a rayon-type material and a poly(monoolefin) material for making a non-woven web.

With respect to claim 4 and 7, see figure 5.

With respect to claim 5, page 6 last paragraph, particularly last 4 lines.

With respect to claims 16-22 and 24-25, these claims are essentially repetitions of various combinations or alternative ways of characterizing above rejected claims, for the same reasons set forth above, this claim is taken to be anticipated by France '260.

11. Claims 4-5, 8-9, 17-18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunn et al (US 4,999,235) or Marmon et al (US 6,465,073) as applied to claim 1, 16, or 21 above in numbered paragraph 5 or 6.

Since recited bonding configurations are conventional in the art; and since one in the art would have readily recognized and appreciated that segmented bonding configurations other than linear bonding configuration can also be effectively be used in the process of Marmon et al, these claims would have been obvious in the art.

***Allowable Subject Matter***

12. The following is a statement of reasons for the indication of allowable subject matter:

Although the recited bonding configuration recited in claim 23 and 33-35 are known per se in the art, there is no motivation in the art to use the configuration recited in this claim to any of the above references.

13. Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 33-35 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.



***Response to Arguments***

15. Applicant's arguments filed on 01-20-04 have been fully considered but they are not persuasive. Response to Counsel's argument is set forth in the prior office action.

***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sam Chuan C. Yao  
Primary Examiner  
Art Unit 1733

Scy  
02-07-04